

# PRISON REFORM TRUST

## A Review of the Rehabilitation of Offenders Act 1974

***The work of the Prison Reform Trust is aimed at creating a just, humane and effective penal system. We do this by: inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, Government and officials towards reform.***

1. The Prison Reform Trust (PRT) welcomes this opportunity to provide the Home Office Review Team with its views on the Act at the outset of the review process.
2. PRT would like to be kept informed of progress in this fundamental review of the Act. We would welcome the opportunity to contribute to the work of the Advisory Group.
3. PRT is wholly supportive of the decision that the Review should begin by examining the fundamental principles on which the Act is based. These will need to accommodate the twin aims of:
  - A) Rehabilitating offenders and
  - B) Protecting the public

The statement of aims of the Review are supported by PRT, namely that it will produce proposals which:

- “deal honestly, fairly, sensitively and openly with people
  - ensure the best possible contribution to the Government’s strategy for crime reduction, alongside other initiatives such as the Sentencing Review and the Review of Barriers to Employment and Housing undertaken by the Social Exclusion Unit
  - provide a coherent and clear balance between the interests of those who have been convicted of a crime but now want to lead constructive and law abiding lives, and those vulnerable people who legitimately deserve reasonable protection against offences being committed against them
  - contribute to a proportionate, efficient and cost effective system of criminal record disclosure
  - comply with the Human Rights Act 1998, and relevant legislation designed to ensure equality of opportunity in the workplace.”
4. PRT believes that the Act does not sufficiently support the resettlement of offenders. The Act is therefore unnecessarily restrictive in its contribution to public safety. The principle weaknesses are:
    - Large numbers of offenders are excluded from the Act and therefore from the prospect of becoming legally rehabilitated. On 31<sup>st</sup> May 1999, 63% of the 51,409 sentenced prisoners were serving sentences of over two and a half years imprisonment and would be excluded from the benefits of the Act on release. It is estimated that 70,000 people aged 40 and under in England and Wales have served custodial sentences of more than two and

a half years, the arbitrary threshold, which excludes them from the prospect of eventual rehabilitation.

- Even if the principle of a sentencing threshold is considered necessary, it needs to be recognised that sentencing practice has changed considerably since the Act was introduced. The average sentence length has increased by 30%. An offender who was given a sentence of two and a half years in 1974 would, on average, receive a sentence of closer to three and a half years now.
- Furthermore the sentencing framework has changed with the Criminal Justice Act 1991 and long term prisoners are now defined as those serving four years or more for the purpose of rules on parole and early release.
- Many of those who are included in the provisions of the 1974 Act must undergo very long periods before their convictions become spent. For most offenders the experience is one of serving a double sentence. The rehabilitation period continues long after they have "served their time" or completed their court order.
- The Act does not facilitate employment on release from prison or during a community sentence. It does little to reduce the likelihood of re-offending during these critical periods. Any doubts about the significance of employment in reducing crime were finally removed by Home Office Research Study 192: 'Explaining a reconviction following a community sentence: the role of social factors.' The report concluded: "Employment variables were significantly related to reconviction rates in each of the areas, and this result confirms the relationship found in other studies."
- All rehabilitation periods in the Act are over-long and do not serve the needs of society in encouraging offenders to lead law-abiding lives. The link between unemployment and re-offending has been demonstrated by numerous research studies. In 1997 the Association of Chief Probation Officers found that 60% of people under probation supervision were unemployed - eight times the level of the general population. A NACRO study in 1998 revealed that 45% of unemployed offenders under probation supervision had been unemployed for more than two years. A 1997 NACRO survey showed that 60% of those surveyed had been specifically refused employment on the basis of their criminal record.
- There are no incentives to encourage offenders to comply with rehabilitative programmes or to pursue their own employment, training and education targets, either in prison or in the community. This cannot be sensible in the light of the Home Office review of research published in 1991, which indicated that released prisoners were less than half as likely to re-offend if they were helped to find and keep a job. The meta-analysis of international research carried out by Lipsey, (see James McGuire's book: 'What Works: Reducing Reoffending'), on the treatment of young offenders concluded: "The single most effective factor in reducing re-offending rates, with a positive effect size of 37% is employment."

5. PRT is mindful of the potential impact of the Criminal Records Bureau on the employment prospects of offenders. To ensure best employment practice and reduce the opportunities for inappropriate discrimination against offenders it is essential that the "Proposed Code of Practice for organisations seeking access to criminal record information on employees or prospective employees" is placed on a statutory footing. PRT supports the Code as set out in Annex C of "On the Record: the Government's Proposals for Access to Criminal Records for Employment and Related Purposes in England and Wales", which was presented to Parliament in June 1996.

It is salutary to reflect on the 1997 NACRO survey of employers in London, which showed that less than half would offer a job to a young person with a criminal record. A further survey in 1998 showed that only one in five employers had knowingly employed someone with a criminal record. A survey of 700 employers, published by Apex Trust in 1991, found that only 12% of the private sector respondents and 17% of public sector respondents had knowingly employed an ex-offender in the previous year. Over 90% of employers surveyed did not include ex-offenders in their equal opportunities policy.

The report of the Better Regulation Taskforce, 1999, stated: "We are concerned by studies that suggest that the majority of employers would not employ anyone with a criminal record. It is important that criteria are developed to help employers or regulators test relevance in each particular field."

- ◆ **Recommendation 1: That a Code of Practice, for all organisations seeking access to criminal record information on employees or prospective employees, should be introduced when the Criminal Records Bureau becomes operational and that the Code should be mandatory.**

The monitoring and enforcement of such a Code will be critical to its success. The Review Team must pay particular attention to the means of ensuring that the Code of Practice is complied with.

6. PRT believes that the concept of "rehabilitation periods" before an offence becomes "spent" should be expressed in simple terms within a framework that is fair and is easy for offenders and employers to understand. The Government's Better Regulation Task Force on "Fit Person Criteria" (May 1999) stated: "The Act...sets out a complex array of rehabilitation periods to determine when different types of conviction are spent. These periods seem to have arisen more from political expediency than any rational justification." The Task Force also stated that a review of the Act "should not be used as an opportunity to extend its exemptions."

- ◆ **Recommendation 2: That the framework for rehabilitation periods should be a simple construct that is easy to understand and that the Review should not be used as an opportunity to extend exemptions from the legislation.**

7. PRT has given careful thought to the length and range of rehabilitation periods. Reconviction rates, for research purposes, are measured from two years after the

date of conviction for community sentences and two years after the date of release for prison sentences. There is considerable merit, in terms both of clarity and for the rehabilitation of offenders, in having two years as a baseline for the rehabilitation period for the majority of offences. For community sentences the two year period would commence on the date of conviction. For prison sentences of less than four years the two year period would commence on the date of release.

- ◆ **Recommendation 3: For a “two year rule” to apply to rehabilitation periods, from the date of conviction for community sentences and from the date of release for the majority of prison sentences. The exceptions to this rule would be Schedule One Offences and sentences of imprisonment of more than four years. People would have to declare all their convictions, even if they are spent when applying for designated “protected posts”.**

8. For those offenders sentenced to periods in custody for periods of four years or more PRT believes that the rehabilitation period should be determined by the Parole Board at the time that release is decided. The Parole Board would need to determine guidelines, in order to ensure consistency. PRT also proposes a review mechanism in such cases to allow for the possibility of good behaviour to be rewarded. This would be informed by the Probation Service and where appropriate by the Prison Service.

- ◆ **Recommendation 4: For offenders sentenced to four years imprisonment or more to have their rehabilitation period determined by the Parole Board at the time release is decided. For a review mechanism to be established. Reports on risk would be provided by the Probation Service and where appropriate by the Prison Service.**

9. The Gardiner Committee in its report, "Living it Down" (1992) noted that "Changes of personality take place more quickly during most people's teens and less time is needed to give society reasonable assurance that the change will last." Its recommendation that rehabilitation periods should be halved for people convicted as juveniles was incorporated into the legislation. PRT would wish to see this principle enshrined in the new legislation. For the majority of offences, under PRT's recommendations, this would mean that convictions for juveniles would become spent one year after conviction where a community sentence was imposed and one year after release where a custodial sentence was imposed.

- ◆ **Recommendation 5: For juvenile offenders the rehabilitation period should be one year from the date of conviction for community sentences and one year from the date of release for custodial sentences of less than four years.**

10. The present system can trap many offenders, particularly young adult offenders into a spiral that they feel they cannot escape from. PRT believes that this is damaging for offenders, invites deceit and is harmful to public safety. The new system should include incentives to reward offenders for completing programmes, in prison or in the community, and court orders, without re-offending. This is a logical step forward given the evidence base of accredited programmes associated with a reduction in re-offending rates. PRT therefore advocates the introduction of a formal means of

applying for the spent period to be terminated early. The procedure would involve the provision of evidence from the Probation and / or Prison Services as a means of ensuring a thorough assessment of risk to the public.

- ◆ **Recommendation 6: For a formal procedure to be established to allow offenders to apply for the early termination of the rehabilitation period following the successful completion of court orders and achievements such as the completion of prison or community based accredited offending behaviour programmes. For the Probation and Prison Services to supply evidence of risk in connection with each application.**

11. Some Probation Areas, in conjunction with partner agencies and the Prison Service, have developed good practice in relation to disclosure of convictions. Good practice should be disseminated nationally along with a training programme and where possible incorporated into the Pathfinder projects on resettlement.

- ◆ **Recommendation 7: Good practice in assisting offenders with disclosure of convictions should be identified and disseminated nationally. This work should be progressed with some urgency to ensure the implementation of good practice by the time the Criminal Records Bureau becomes fully operational.**

12. In 1999 the Home Office issued a consultation paper which proposed that cautions, reprimands and final warnings should be brought within the scope of the 1974 Act and when administered should immediately be regarded as spent. PRT agrees with this proposal.

- ◆ **Recommendation 8: For cautions, reprimands and final warnings to be brought within the scope of the legislation and when administered to be immediately regarded as spent.**

13. The recommendations in this paper are focussed on the creation of a new framework for legislation. PRT is also concerned about the many other factors that adversely affect the resettlement of offenders. These include: the limited access for most prisoners to skills training, work opportunities, volunteering, intensive pre-release courses; accommodation and financial problems that face many prisoners on release; and mental health difficulties that are especially marked among those leaving prison. The particular issues faced by women prisoners are explained in the PRT Report "Justice for Women: the Need for Reform".

The Prison Reform Trust would be pleased to supply further information, or to present its recommendations in person to the Review Team, if this would be helpful to the process.

Geoff Dobson  
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23<sup>rd</sup> May 2001.

# Appendix one

## Young Men, Work and their Criminal Record

(Extracts from: 'Tell Them So They Listen': Messages from Young People in Custody ~ Home Office Research Study 201)

"It's harder getting a job when you've been in prison, you go for some job interviews when you've been in prison ... maybe you'll come across some who won't, but the majority of them when you've been in prison, so you go grafting with your mates and you end up back here. That's what most of the people come back in for, not a lot of people are willing to give you a chance, they're not interested, you've been to prison."

"As soon as they hear 'prison' nah, don't want you, or 'we'll get back in contact with you' and you never hear nothing. It's like if you sign up with an agency and are honest with them and say you've got a police record, they say 'oh we might have some work for you' but most places won't take you and you don't hear nothing from them, they don't want to know. So you're in a no-win situation."

" People just see jail, bad, criminal, thief, murderers, rapists."

"So if I went out there and got a job on a building site, and they said 'Right you've been in jail, I'm not going to look at that. I'm going to look at the way you work first. I'm going to give you a two week trial, because I don't think that going to make much difference. If you can work, you can work, simple as that.' So they give you a two week trial. You work your bollocks off, you graft, yeah fair enough. Doesn't matter if you've been in jail, if you graft hard they'll give you a job. That's how I think it should be anyway."

"I'm 20 now and since I've been 15 I've been in and out of jail. I've spent the best part of 5 years in jail, and I've made no life for myself. I could have done a lot of things in that time ... I'm still only young, just 20 now, so I've got a life ahead of me, so its just thinking 'what can I do when I get out?' "

# Appendix two

## References

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